



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

Mr. Cohen

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OFFICE OF GENERAL COUNSEL

B-203481

September 25, 1981

Sealtite Corporation  
115 Madison Street  
Waukesha, Wisconsin 53186

Attention: Mr. Miles Firnhaber

Gentlemen:

We refer to your letter of June 24, 1981, complaining about actions by the Veterans Administration (VA) in connection with three procurements: (1) invitation for bids 603-32-81 for the removal of asbestos and for reinsulation at the VA Medical Center in Louisville, Kentucky, (2) Project SLP-158, Specification 481-B to insulate buildings at the VA Medical Center in Marion Indiana; and (3) solicitation NR-180-110 to insulate attic space in certain VA buildings and install a new catwalk.

While the bases for your complaints were not clear from your letter, in a July 15 telephone conversation with Jerold Cohen of our Office you suggested that you did not receive any of the contracts because of improprieties by the VA contracting officers involved. You told Mr. Cohen that you did not intend your June 24 letter as a protest under our Bid Protest Procedures, 4 C.F.R. part 21 (1981), which sets out the mechanism for our review of complaints against Federal procurement actions, but rather that you simply wanted to bring the allegedly improper actions to our attention for our investigation.

At Mr. Cohen's request, you furnished documentation to support your allegations. We have reviewed that material, and we see no basis to consider your complaints further.

The material shows that you were the low bidder under the Louisville procurement. The VA found you nonresponsible, and referred the matter to the Small Business Administration (SBA) under the certificate of competency (COC) procedures. The SBA did not issue your firm a COC because you failed to file for one within the prescribed time; the failure to file for a COC is analagous to a refusal by the SBA to

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issue one, and thus represents, in effect, an affirmation of the contracting officer's determination.

The COC procedures are intended to give a small business concern a degree of protection against a contracting officer's unreasonable determination of the firm's non-responsibility. Where a small business fails to use the process properly we see no basis for our Office to investigate a subsequent complaint against the rejection of the firm as nonresponsible. In this respect, we note that you had at least one week between the date that you received from the SBA the documents necessary to apply for a COC and the date that the SBA closed its file in the case.

Regarding the Marion procurement, the record shows that you were the low bidder but were found nonresponsible. The VA failed to refer the matter to the SBA before awarding the contract to another firm. The material that you furnished to our Office shows that the VA Inspector General looked into the matter, but the extent to which the Inspector General considered the propriety of the rejection of your bid without SBA input under the COC procedures is not clear. VA Headquarters informally advises us, however, that it did tell the contracting officials involved in the Marion procurement to avoid a recurrence of the situation.

Thus, it appears that the contracting officer acted improperly in failing to refer the matter of your firm's responsibility to the SBA. Nonetheless, we do not believe that this fact warrants our investigation at this time.

As you know, we generally consider these types of matters under our Bid Protest Procedures. Section 21.2 (b)(2) requires that complaints such as this one be raised with either our Office or the contracting agency within 10 working days after the basis for complaint becomes apparent. Section 21.2(a) requires that if a protest is filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the agency's initial adverse action on the protest.

We understand that your submission is not intended as a bid protest under our Procedures. Nonetheless, the time limits in section 21.2 are intended precisely for this type of situation, that is, they are designed to insure that complaints such as yours are raised in our Office while there still is time to recommend remedial action, if appropriate. The record shows that the Marion procurement took place in early 1980, and while you pursued the

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matter with the VA for a few months, you waited almost a year to bring it to our attention. We see no reason to consider at this late date a matter which was not timely raised under our well established mechanism to review such complaints, particularly in view of the informal VA advice that we have received and the absence of any substantive evidence of wrongdoing other than that noted.

As to the third procurement (solicitation NR-80-110), your mailed bid was rejected because it was not received before bids were opened. It is a bidder's responsibility to see that its bid is delivered to the proper place at the proper time. See Northwest Instrument, B-200873, November 18, 1980, 80-2 CPD 373. Therefore, a late mailed bid must be rejected unless it was sent by registered or certified mail not later than the fifth calendar day before the date specified in the invitation, or unless the late receipt was due solely to Government mishandling after receipt at the installation. Federal Procurement Regulations § 1-2.303-3 and § 1-2.202 (a)(31)(1964 ed.). You have furnished no evidence to show that one of the cited exceptions should have applied, and therefore we must assume that the late receipt was your own fault. Accordingly, we will not consider the matter further.

Sincerely yours,

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel

## DIGEST

Complaint that firm did not receive award under three specified Veterans Administration procurements because of alleged improprieties by contracting officers is dismissed. Material furnished by complainant shows that in two cases contracting officers' actions conformed to procurement rules and regulations. While third matter involves improper rejection of firm's low bid based on finding of nonresponsibility without referral to Small Business Administration under certificate of competency procedures, procurement took place one year ago, and contracting agency informally advises that it has taken action to prevent recurrence of the error.